

STATE OF IOWA, ex rel., IOWA )  
DEPARTMENT OF NATURAL )  
RESOURCES, )

CASE NO. \_\_\_\_\_

VS.

CHAMNESS TECHNOLOGY, INC.,

Defendant.

PETITION AT LAW

## INTRODUCTION

## PARTIES

3. Chamness is an Iowa corporation doing business in Wapello County, Iowa.

## **DEFINITIONS**

### **Solid Waste Definitions**

4. “Composting facility” means “all related receiving, processing, production, curing, and storage areas and necessary roads, buildings, equipment, litter control devices, pollution control devices, fire control devices, landscaping, gates, personnel and maintenance facilities, sewer and water lines, and process water.” 567 Iowa Admin. Code 105.1(1).

5. “Compost leachate” means “a liquid that has percolated through or drained from compost.” 567 Iowa Admin. Code 105.1(1).

6. “Sanitary disposal project” means “all facilities and appurtenances including all real and personal property connected with such facilities, which are acquired, purchased, constructed, reconstructed, equipped, improved, extended, maintained, or operated to facilitate the final disposition of solid waste without creating a significant hazard to the public health or safety, and which are approved by the executive director.” Iowa Code § 455B.301(21).

7. “Solid waste” means “garbage, refuse, rubbish, and other similar discarded solid or semisolid materials, including but not limited to such materials resulting from industrial, commercial, agricultural, and domestic activities.” Iowa Code § 455B.301(23).

8. “Solid waste composting” means “the composting of any organic material with or without yard waste.” 567 Iowa Admin. Code 105.1(1).

9. “Yard waste” means “vegetative matter such as grass clippings, leaves, garden waste, brush and trees, and any clean wood waste which is necessary as bulking agent and which is free of coatings and preservatives.” 567 Iowa Admin. Code 105.1(1).

### **Water Pollution Control Definitions**

10. “Acute toxicity” means “that level of pollutants which would rapidly induce a severe and unacceptable impact on organisms.” 567 Iowa Admin. Code 60.2.

11. "Discharge of a pollutant" means any addition of any pollutant or combination of pollutants to waters of the state from any point source, including additions of pollutants into waters of the state from surface runoff which is collected or channeled by human activity; discharges through pipes, sewers, or other conveyances which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. 567 Iowa Admin. Code 60.2.

12. "Industrial waste" means "any liquid, gaseous, radioactive, or solid waste substance resulting from any process of industry, manufacturing, trade, or business or from the development of any natural resource." Iowa Code § 455B.171(9).

13. "NPDES permit" means an operation permit, issued pursuant to the IDNR National Pollutant Discharge Elimination System (NPDES) program that authorizes the discharge of any pollutant into a navigable water. 567 Iowa Admin. Code 60.2.

14. "Person" means "any agency of the state or federal government or institution thereof, any municipality, governmental subdivision, interstate body, public or private corporation, individual, partnership, or other entity and includes any officer or governing or managing body of any municipality, governmental subdivision, interstate body, or public or private corporation." Iowa Code § 455B.171(16).

15. "Pollutant" means "sewage, industrial waste, or other waste." Iowa Code § 455B.171(18).

16. "Water of the state" means "any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof." Iowa Code § 455B.171(37).

17. "Water pollution" means "the contamination or alteration of the physical, chemical, biological, or radiological integrity of any water of the state by a source resulting in whole or in part from the activities of humans, which is harmful, detrimental, or injurious to public health, safety, or welfare, to domestic, commercial, industrial, agricultural, or recreational use or to livestock, wild animals, birds, fish, or other aquatic life." Iowa Code § 455B.171(38).

## **JURISDICTION**

### **Solid Waste Regulations**

18. The Iowa Environmental Protection Commission (hereafter "EPC") is authorized to adopt rules for the proper administration of Iowa Code chapter 455B, Division IV, Part 1, which provides for the treatment and disposition of solid waste. Iowa Code § 455B.304. Pursuant thereto, the EPC has adopted 567 Iowa Admin. Code chapters 100-119 concerning solid waste management and disposal.

19. The EPC is authorized to adopt rules defining yard waste, providing for the safe and proper method of composting, and for the permitting of local composting facilities. Iowa Code § 455D.9(2)-(3).

20. The IDNR Director has authority to issue permits for the construction and operation of sanitary disposal projects. Iowa Code § 455B.305(1).

21. Sanitary disposal projects utilizing a composting process are subject to the provisions of 567 Iowa Admin Code chapter 105. *See* 567 Iowa Admin Code § 104.1.

22. Composting facilities must take measures to prevent compost leachate and runoff from leaving the composting facility. Runoff from the composting facility must be properly managed. 567 Iowa Admin Code § 105.3(3).

23. A person who violates any provision of Iowa Code chapter 455B, Division IV, Part 1 or any permit, rule, or order issued thereunder shall be subject to a civil penalty not to exceed five thousand dollars (\$5,000.00) for each day of such violation. Iowa Code § 455B.307(3).

24. The Attorney General is authorized, at the request of the IDNR, to initiate any legal proceedings necessary to enforce the provisions of Iowa Code chapter 455B, Division IV, Part 1, or any rules promulgated thereunder, or to obtain compliance with the provisions of any order issued thereunder. Iowa Code § 455B.307(2).

25. The Attorney General is authorized, on request of the IDNR, to institute any legal proceedings necessary in obtaining compliance with an order of the director or prosecuting any person for a violation of an order of the director or the provisions of Iowa Code chapter 455D, or any rules adopted or permit or order issued pursuant to chapter 455D. Iowa Code § 455D.25(1).

### **Water Pollution Control Regulations**

26. The IDNR is the agency of the state responsible for the prevention, abatement, or control of water pollution. Iowa Code § 455B.172(1). The IDNR maintains jurisdiction over and regulates the direct discharge of pollutants to a water of the state. Iowa Code § 455B.172(5).

27. The EPC has authority to establish water quality standards, pretreatment standards, and effluent standards; and adopt rules relating to the location, construction, operation, and maintenance of disposal systems; permits for the operation, installation, construction, addition to, or modification of disposal systems, or for the discharge of any pollutant; and inspection, monitoring, record keeping, and reporting requirements for owners and operators of disposal systems. Iowa Code §§ 455A.6(6)(a) and 455B.173(2), (3) and (6). The EPC's rules implementing these provisions are contained in 567 Iowa Admin. Code 60-69.

28. Operation of any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the IDNR is prohibited. 567 Iowa Admin. Code 64.3(1).

29. For any operation permit issued by the IDNR, the permittee at all times shall maintain in good working order and operate as efficiently as possible any facilities or systems of control to achieve compliance with the terms and conditions of the permit. 567 Iowa Admin. Code 64.7(5)“f”.

30. Iowa water quality standards require that all surface waters of the state shall be free from materials attributable to wastewater discharges substances attributable to wastewater discharges in concentrations or combinations which are acutely toxic to human, animal, or plant life. 567 Iowa Admin. Code 61.3(2)“d”.

31. The dumping, depositing, or discharging of pollutants into any water of the state is prohibited, except adequately treated sewage, industrial waste, or other waste pursuant to an NPDES permit issued by the IDNR. Iowa Code § 455B.186(1); 567 Iowa Admin. Code 62.1(1).

32. A person who violates any provision of Iowa Code chapter 455B, Division III, Part 1 or any permit, rule, standard, or order issued thereunder shall be subject to a civil penalty not to exceed five thousand dollars (\$5,000.00) for each day of such violation. Iowa Code § 455B.191(2).

33. The Attorney General is authorized, at the request of the IDNR director with approval of the EPC, to initiate any legal proceedings, including an action for an injunction or temporary injunction, necessary to enforce the penalty provisions of Iowa Code chapter 455B, Division III, Part 1, or to obtain compliance with the provisions of said statutes or any rules promulgated or any provision of any permit issued thereunder. Iowa Code § 455B.191(5).

## FACTS

34. Chamness is an Iowa corporation headquartered in Blairsburg, Iowa, and it operates an 80-acre solid waste composting facility at 24820 160<sup>th</sup> Street, Eddyville, Iowa in Wapello County (“composting facility”).

35. In addition to wood and yard waste, Chamness processes numerous industrial waste products at the composting facility including food processing by-products, pre-and post-consumer food scraps, outdated biodegradable agricultural products, industrial bio-solids and biotechnology by-products, non-recyclable paper and cardboard, manures and food processing waste.

36. The composting facility includes a 16-acre asphalt pad for processing and active composting of materials.

37. Chamness maintains three storm water retention basins at the composting facility to collect and contain all storm water and compost leachate runoff from the 16-acre asphalt pad. The east and west basins each have an approximate 1.9 million gallon capacity, while the center basin has a 4.3 million gallon capacity. The center basin became operational on November 27, 2009. The total effective volume of the combined retention basins is approximately 8.1 million gallons.

38. Chamness operates the composting facility pursuant to Solid Waste Composting Permit No. 90-SDP-10-97P-COM, issued on December 6, 2007, and renewed on February 28, 2011, and is authorized to land apply wastewater from the three retention basins pursuant to NPDES Operation Permit No. 90-00-1-05, issued October 13, 2006.

39. NPDES Operation Permit No. 90-00-1-05 specifically provides that “[n]o waste discharge into the waters of the State of Iowa shall be caused, allowed or permitted from waste storage facilities or from the land application system.”

40. Standard Condition No. 11 of NPDES Operation Permit No. 90-00-1-05 provides that Chamness shall operate all facilities and control systems as efficiently as possible and maintain them in good working order.

41. In June and July 2010, Solid Waste Composting Permit No. 90-SDP-10-97P-COM incorporated a Revised Operating Plan, effective April 8, 2009, for the composting facility that contains storm water system management and maintenance requirements. The permit currently incorporates a Revised Operating Plan with an effective date of February 18, 2011.

42. The 2009-2011 Operating Plan specified that Chamness was not permitted to discharge water from the retention basins, and each pond contained a marker two feet below the top of the basin wall (the minimum "freeboard" level) indicating the maximum level that water could be stored in each basin.

43. The 2009-2011 Operating Plan contained a Storm Water Pollution Prevention Plan (Revised October 2008) to be followed by Chamness in the event of heavy rainfall.

44. In order to prevent water in the east and/or west retention basins from exceeding the minimum freeboard level, the Storm Water Pollution Prevention Plan required Chamness to implement the following procedures, as conditions permit, to prevent an overflow:

- a. Apply water from the fullest basin to the compost windrows;
- b. Land apply water pursuant to NPDES Permit No. 90-00-1-05; and
- c. Pump water to the center basin.

45. In order to prevent water in the center basin from exceeding the minimum freeboard level, the Storm Water Pollution Prevention Plan required Chamness to remove water from the basin with tanker trucks and land apply water pursuant to NPDES Permit No. 90-00-1-05.



46. If the levels of the basins came within 6 inches of overflowing, and no water could be applied to the compost, the Storm Water Pollution Prevention Plan required Chamness to implement the following procedures, as conditions permit, to prevent an overflow:

- a. Remove and store the water in trucks or a storage tank;
- b. Land apply water pursuant to NPDES Permit No. 90-00-1-05;
- c. Discontinue receipt of high liquid content materials; and
- d. Make arrangements to haul water to the Ottumwa Water Pollution Control Facility.

#### **Prior Enforcement History**

47. On November 19, 2008, the IDNR issued Administrative Consent Order No. 2008-WW-31/2008-SW-40 to Chamness for solid waste and water quality violations at the composting facility, including illegal discharges from the retention basins to Palestine Creek, a water of the State of Iowa. The order imposed a \$10,000 administrative penalty against Chamness requiring \$2,000 to be paid to the IDNR, and a Supplemental Environmental Project (SEP) of \$8,000 to be paid to the Iowa Natural Heritage Foundation (INHF). (Attached hereto as Exhibit 1).

48. Chamness paid \$2,000 of the administrative penalty to the IDNR in November 2008, and it paid the remaining \$8,000 administrative penalty to the INHF in November 2008.

49. The order also directed Chamness to submit a revised Operation Plan that included the construction of Storm Water Retention Basin #3 (the center basin). Chamness submitted a revised Operation Plan in December 2008, and completed construction of the center storm water basin in November 2009.

50. On June 23, 2010, the IDNR issued Administrative Consent Order No. 2010-WW-10/2010-SW-27 to Chamness for solid waste and water quality violations at the composting facility, including illegal discharges from the retention basins. The order imposed a \$10,000 administrative

penalty against Chamness requiring \$2,000 to be paid to the IDNR, and in lieu of paying the remaining \$8,000, Chamness is to conduct a SEP consisting of a study investigating the effects of compost on prairie seed production before the end of summer 2011. (Attached hereto as Exhibit 2).

51. Chamness paid \$2,000 of the administrative penalty to the IDNR in July 2010; however, it has not provided documentation to the IDNR that the compost study has been initiated.

52. Among other requirements, Administrative Consent Order No. 2010-WW-10/2010-SW-27 required Chamness to maintain at least two feet of freeboard at all times in all three storm water basins, ensure that there are no overflows from any of the three storm water basins, and enter into an agreement with a wastewater treatment facility to accept large volumes of water in the event the basins are full and land application is not possible.

#### **June-July 2010 Releases from the Storm Water Retention Basins**

53. On June 14, 2010, Rebecca Nott, Environmental Compliance Manager for Chamness, notified IDNR Field Office #6, located in Washington, Iowa, via email that the center and west retention basins were overflowing due to a rainfall event. She informed the IDNR that Chamness was attempting to lower the levels of the ponds by pumping water into the compost windrows and a paper mill sludge stockpile.

54. The IDNR inspected the composting facility on June 14 and observed wastewater overflowing from the west retention basin and into Palestine Creek. Water samples taken from Palestine Creek downstream from the release confirmed high levels of Biochemical Oxygen Demand (260 mg/l), Total Suspended Solids (60 mg/l) and Ammonia Nitrogen (NH<sub>3</sub>-N) (140 mg/l).

55. On June 15, 2010, Ms. Nott notified the IDNR Field Office #6 via email that she believed all three retention basins at the composting facility were overflowing. The IDNR inspected the site that same day and observed wastewater overflowing from the east and west retention basins and into Palestine Creek. Water samples taken from the creek downstream from the release

confirmed high levels of Biochemical Oxygen Demand (200 mg/l), Total Suspended Solids (990 mg/l) and Ammonia Nitrogen (NH<sub>3</sub>-N) (70 mg/l).

56. On June 16, 2010, Ms. Nott notified the IDNR Field Office #6 via email that the west retention basin was overflowing due to a rainfall event. The IDNR inspected the site the same day and observed wastewater overflowing from the west retention basin and into Palestine Creek. Water samples taken from the creek downstream from the release confirmed high levels of Biochemical Oxygen Demand (270 mg/l), Total Suspended Solids (330 mg/l) and Ammonia Nitrogen (NH<sub>3</sub>-N) (130 mg/l).

57. On June 17, 2010, the IDNR took water samples from Palestine Creek downstream from the composting facility. The water samples confirmed high levels of Ammonia Nitrogen (NH<sub>3</sub>-N) (18 mg/l) remained in the creek.

58. On June 22, 2010, The IDNR inspected the composting facility and observed that the east retention basin only had approximately one foot of freeboard, the center retention basin only had approximately eight inches, and the west retention basin was overflowing to Palestine Creek. Water samples taken from the creek downstream from the release confirmed high levels of Biochemical Oxygen Demand (105 mg/l), Total Suspended Solids (240 mg/l) and Ammonia Nitrogen (NH<sub>3</sub>-N) (79 mg/l).

59. On June 23, 2010, Ms. Nott notified the IDNR Field Office #6 via email that the center retention basin was overflowing due to a rainfall event. Ms. Nott emailed the field office later that same day that Chamness had pumped the water off the center pond and the overflow had stopped. The IDNR did not conduct an inspection of the composting facility to confirm the release or conduct water sampling.

60. On July 26, 2010, Ms. Nott notified the IDNR Field Office #6 via email that the east retention basin was overflowing due to a rainfall event. Ms. Nott called and left a voice mail with

the field office later that same day stating that the overflow had stopped. The IDNR did not conduct an inspection of the composting facility to confirm the release or conduct water sampling.

## **VIOLATIONS**

### **Illegal Discharge to Waters of the State of Iowa**

61. On June 14-16, 2010, Chamness discharged wastewater into Palestine Creek in violation of Iowa Code section 455B.186(1), 567 Iowa Admin. Code 64.3(1), Administrative Consent Order No. 2008-WW-31/2008-SW-40 and NPDES Permit No. 90-00-1-05.

62. On June 22, 2010, Chamness discharged wastewater into Palestine Creek in violation of Iowa Code section 455B.186(1), 567 Iowa Admin. Code 64.3(1), Administrative Consent Order No. 2008-WW-31/2008-SW-40 and NPDES Permit No. 90-00-1-05.

### **Violation of Water Quality Standards**

63. On June 14-16, 2010, Chamness' discharges of wastewater into Palestine Creek resulted in violation of the water quality standards contained in 567 Iowa Admin. Code 61.3(2)"d".

64. On June 22, 2010, Chamness' discharges of wastewater into Palestine Creek resulted in violation of the water quality standards contained in 567 Iowa Admin. Code 61.3(2)"d".

### **Failure to Prevent Compost Leachate or Runoff from Leaving Composting Facility**

65. On June 14-16, 2010, Chamness failed to prevent compost leachate and/or runoff from leaving the composting facility in violation of 567 Iowa Admin. Code 105.3(3), and Administrative Consent Order No. 2008-WW-31/2008-SW-40.

66. On June 22-23, 2010, Chamness failed to prevent compost leachate and/or runoff from leaving the composting facility in violation of 567 Iowa Admin. Code 105.3(3), and Administrative Consent Order No. 2008-WW-31/2008-SW-40.

### **Failure to Properly Manage Runoff from the Composting Facility**

67. On June 23, 2010, Chamness failed to properly manage runoff from the composting facility in violation of 567 Iowa Admin Code § 105.3(3) and Administrative Consent Order No. 2008-WW-31/2008-SW-40.

68. On July 26, 2010, Chamness failed to properly manage runoff from the composting facility in violation of 567 Iowa Admin Code § 105.3(3) and Administrative Consent Order No. 2008-WW-31/2008-SW-40.

### **Illegal Discharge of Wastewater from Storm Water Retention Basins**

69. On June 14, 2010, wastewater discharged from Chamness' center and west storm water retention basins in violation of Solid Waste Composting Permit No. 90-SDP-10-97P-COM and Administrative Consent Order No. 2008-WW-31/2008-SW-40.

70. On June 15, 2010, wastewater discharged from Chamness' east and west storm water retention basins in violation of Solid Waste Composting Permit No. 90-SDP-10-97P-COM and Administrative Consent Order No. 2008-WW-31/2008-SW-40.

71. On June 16, 2010, wastewater discharged from Chamness' west storm water retention basin in violation of Solid Waste Composting Permit No. 90-SDP-10-97P-COM and Administrative Consent Order No. 2008-WW-31/2008-SW-40.

72. On June 22, 2010, wastewater discharged from Chamness' west storm water retention basin in violation of Solid Waste Composting Permit No. 90-SDP-10-97P-COM and Administrative Consent Order No. 2008-WW-31/2008-SW-40.

73. On June 23, 2010, wastewater discharged from Chamness' center storm water retention basin in violation of Solid Waste Composting Permit No. 90-SDP-10-97P-COM and Administrative Consent Order No. 2008-WW-31/2008-SW-40.

74. On July 26, 2010, wastewater discharged from Chamness' east storm water retention basin in violation of Solid Waste Composting Permit No. 90-SDP-10-97P-COM, Administrative Consent Order No. 2008-WW-31/2008-SW-40, and Administrative Consent Order No. 2010-WW-10/2010-SW-27.

#### **Failure to Maintain Adequate Freeboard**

75. On and before June 14-16, 2010, Chamness failed to implement requirements to maintain adequate freeboard in its center, east and west storm water retention basins in violation of Solid Waste Composting Permit No. 90-SDP-10-97P-COM and Administrative Consent Order No. 2008-WW-31/2008-SW-40.

76. On and before June 22-23, 2010, Chamness failed to implement requirements to maintain adequate freeboard in its center, east and west storm water retention basins in violation of Solid Waste Composting Permit No. 90-SDP-10-97P-COM and Administrative Consent Order No. 2008-WW-31/2008-SW-40.

77. On and before July 26, 2010, Chamness failed to implement requirements to maintain adequate freeboard in its east storm water retention basin in violation of Solid Waste Composting Permit No. 90-SDP-10-97P-COM, Administrative Consent Order No. 2008-WW-31/2008-SW-40, and Administrative Consent Order No. 2010-WW-10/2010-SW-27.

78. On and before July 26, 2010, Chamness failed to maintain two feet of freeboard in its east storm water retention basin in violation of Administrative Consent Order No. 2010-WW-10/2010-SW-27.

#### **Failure to Operate Facilities Efficiently and in Good Working Order**

79. On and before June 14-16, 2010, Chamness failed to operate its facilities efficiently and in good working order in violation of 567 Iowa Admin. Code 64.7(5)“f”, NPDES Permit No. 90-00-1-05, and Administrative Consent Order No. 2008-WW-31/2008-SW-40.

80. On and before June 22-23, 2010, Chamness failed to operate its facilities efficiently and in good working order in violation of 567 Iowa Admin. Code 64.7(5)"f", NPDES Permit No. 90-00-1-05, and Administrative Consent Order No. 2008-WW-31/2008-SW-40.

81. On and before July 26, 2010, Chamness failed to operate its facilities efficiently and in good working order in violation of 567 Iowa Admin. Code 64.7(5)"f", NPDES Permit No. 90-00-1-05 and Administrative Consent Order No. 2008-WW-31/2008-SW-40.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources respectfully requests that the Court:

a. assess a civil penalty against Chamness Technology, Inc. pursuant to Iowa Code section 455B.191(2) for each day of violation of Iowa Code section 455B.186(1), 567 Iowa Admin. Code 61.3(2)"d", 64.3(1), 64.7(5)"f", NPDES Permit No. 90-00-1-05, and Administrative Consent Orders 2008-WW-31/2008-SW-40 and 2010-WW-10/2010-SW-27 not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation;

b. assess a civil penalty against Chamness Technology, Inc. pursuant to Iowa Code section 455B.307(3) for each day of violation of Composting Permit No. 90-SDP-10-97P-COM, 567 Iowa Admin. Code 105.3(3) and Administrative Consent Orders 2008-WW-31/2008-SW-40 and 2010-WW-10/2010-SW-27 not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation;

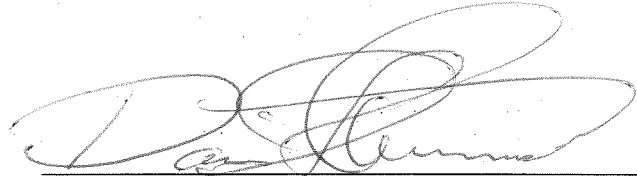
c. issue injunctive relief, including but not limited to a permanent injunction enjoining Chamness Technology, Inc. from any violation of Iowa Code section 455B.186(1), 567 Iowa Admin. Code 61.3(2)"d", 64.3(1), 64.7(5)"f" and 105.3(3), NPDES Permit No. 90-00-1-05, Composting Permit No. 90-SDP-10-97P-COM, and Administrative Consent Orders 2008-WW-31/2008-SW-40 and 2010-WW-10/2010-SW-27.

Plaintiff further requests that the Court tax the costs of this action to Chamness Technology, Inc. and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

THOMAS J. MILLER  
Attorney General of Iowa

DAVID R. SHERIDAN  
Assistant Attorney General

A handwritten signature in dark ink, appearing to read "David S. Steward", is written over a horizontal line.

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ATTORNEYS FOR PLAINTIFF



**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**CHAMNESS TECHNOLOGY, INC.**

Wapello County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 2008-WW- 31

NO 2008-SW- 40

TO: Chamness Technology, Inc.  
Autumn Denato, Manager  
24820 160<sup>th</sup> Street  
Eddyville, Iowa 52553

Chamness Technology, Inc.  
Gary Chamness, Registered Agent  
2255 Little Wall Lake Road  
Blairsburg, Iowa 50034

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Chamness Technology, Inc. (Chamness) for the purpose of resolving solid waste and waste water violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Paul Brandt, Field Office 6  
Iowa Department of Natural Resources  
1023 W. Madison  
Washington, Iowa 52353  
Phone: 319/653-2135

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-8563

**Payment of penalty to:**

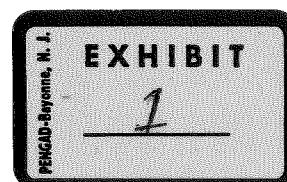
Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to the provisions of Iowa Code sections 455B.175(1) and 455B.307(2), which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B,

RECEIVED

NOV 14 2008



IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: CHAMNESS TECHNOLOGY, INC.

Division III, Part 1 or Iowa Code chapter 455B, Division IV, Part 1 and the rules adopted or permits issued pursuant thereto and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

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Chamness neither admits nor denies the Statement of Facts and enters into this administrative consent order for settlement purposes only.

1. Chamness is an active, permitted, composting facility located several miles south of Eddyville (N 1/2, NW 1/4, Section 19, T73N, R15W, Wapello County). In addition to wood waste and yard waste, Chamness uses numerous industrial waste streams in its composting process. The facility has two retention basins (east and west ponds) to collect and contain all runoff from the 16 acre, asphalt paved composting pad.

2. On October 16, 2006, Chamness was issued an Operation Permit for a Land Application System (Permit #90-00-1-05). The operation permit provided provisions for the land application of storm water runoff from the Chamness facility. The operating permit specifically states that any discharge of waste water to surface waters is not permitted and no sanitary waste may be discharged to the runoff storage ponds. On December 6, 2007, Chamness was issued a Solid Waste Composting Permit (Permit #90-SDP-10-97P-COM). The composting permit included the provisions on the operation and maintenance of the facility, an operating plan, and a list of approved facilities and products to be accepted at the facility. The composting permit has been amended on several occasions since the original issuance.

3. On November 2, 2007, DNR Field Office 6 received a complaint. The complainant stated that it had rained 21 inches during the summer and fall and questioned whether the Chamness facility could hold all the water without overflowing. DNR Field Office 6 staff investigated the complaint on November 9, 2007. The ponds were not overflowing. The east pond had one inch of freeboard and the west pond had three inches of freeboard.

4. On February 26, 2008, DNR Field Office 6 received a complaint concerning the possibility of snow melt runoff at Chamness. DNR Field Office 6 investigated the complaint on March 4, 2008 and found the ponds to be within inches of overflowing. On March 10, 2008, DNR Field Office 6 issued a Notice of Violation letter to Chamness for violations of the facility's Storm Water Pollution Prevention Plan of its composting permit, specifically provisions 6 – 8 regarding when the water reaches or exceeds the freeboard levels. The letter informed Chamness that further evidence of improper operation and management of the storm water control lagoons would result in further enforcement.

5. On April 21, 2008, DNR Field Office 6 received a complaint stating that a terrible odor was coming from the Chamness facility and the complainant questioned the

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: CHAMNESS TECHNOLOGY, INC.

facility's ability to hold all the water generated from the heavy rains that were occurring. On April 22, 2008, DNR Field Office 6 received a complaint that the lagoons at Chamness were overflowing. Paul Brandt, environmental specialist for DNR Field Office 6, investigated the complaint and observed that the west pond was full and overflowing and the east pond was leaking through the berm and the discharge was reaching Palestine Creek. Mr. Brandt collected a sample of the discharge where it met Palestine Creek, a sample from 10 yards upstream from the point at which the discharge met Palestine Creek, and a sample 20 yards downstream from the point at which the discharge met Palestine Creek. The results were as follows:

Location	Biochemical Oxygen Demand (BOD)	Ammonia Nitrogen (NH3)	Total Suspended Solids (TSS)
Discharge Point	8900 mg/L	190 m/L	550 mg/L
Downstream	520 mg/L	42 mg/L	64 mg/L
Upstream	Less than 7 mg/L	1.9 mg/L	9 mg/L

6. On April 23, 2008, Mr. Brandt called the Chamness facility site manager, Autumn Denato, to inform her of the results of his investigation. Mr. Brandt advised Ms. Denato that the ponds were overflowing and leaking. Mr. Brandt also received a call from Gary Chamness. Mr. Chamness reported that he was sending bigger equipment, including an umbilical applicator, to the Eddyville facility to get the ponds pumped down.

7. On April 29, 2008, DNR Field Office 6 received a complaint stating that Chamness was allowing the storm water ponds to overflow and discharge into a nearby creek. The complainant stated the discharge was causing the creek to smell. On May 1, 2008, DNR Field Office 6 received another complaint alleging that a strong odor was coming from the Chamness facility. Mr. Brandt called Ms. Denato about the complaint. Ms. Denato stated that they were pumping out of the ponds and that was probably the source of the odor. Ms. Denato also reported that they had gained enough freeboard to drain the water on the pad back into the pond, and also that the big equipment had arrived and was set up.

8. On May 8, 2008, DNR Field Office 6 issued a Notice of Violation letter to Chamness for violating conditions of its operating permit, having an unpermitted discharge, and failing to maintain its facility in good working order. The letter also informed Chamness that the matter was being referring for further enforcement.

9. On May 12, 2008, DNR Field Office 6 received a complaint that the Chamness facility was generating a terrible odor and because it rained 2 inches on May 10, 2008 there was water standing on the pad. On May 20, 2008, Mr. Brandt from DNR Field Office 6, along with Matt McDonald, Chad Stobbe, and Kirsten Duke, DNR Central Office personnel, visited the Chamness facility. Facility staff had been pumping and applying from the ponds. The west pond had about two feet of freeboard; however there was still water standing on the west end of the pad. The east pond had only a few inches of freeboard, but facility staff was setting up to land apply from the east pond during the visit. The DNR staff

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observed that the east pond was overflowing the south side of the dike. The leak in the berm was still there, but facility staff had constructed a dam composed of compost from the Chamness facility across the drainage way below the seep to contain what leaked out. Dead vegetation indicated there had been an overflow from the south dike of the east pond since the April 22, 2008 visit.

10. On May 27, 2008, DNR Field Office 6 issued a Notice of Violation letter to Chamness for violating the facility's operating permit and the facility's lack of freeboard. The letter required the facility to develop an emergency waste water contingency plan, a plan of action regarding waste water storage capacity, and to keep pumping down the ponds. The letter also reminded Chamness the violations were being referred for further enforcement.

11. On July 15, 2008, DNR Field Office 6 received a complaint alleging that Chamness was not mixing raw feedstock into the compost pad for 8-9 weeks at a time. The complainant also stated that the raw feedstock did not have a bulking agent mixed with it. The complainant also alleged that the odor was terrible, corn starch had been accepted without DNR approval, soybeans were scattered all over, and Chamness was selling uncured compost. Kurt Levetzow and Aaron Pickens, DNR Field Office 6 environmental specialists, investigated the complaint on the same day it was received. While investigating the mixing area, Mr. Levetzow and Mr. Pickens observed the compost pile was extremely large and did not appear to have bulking material mixed in. Since the compost pad containing the compost material was at its maximum holding capacity, there was not enough room to start new rows of compost with the mixed material. The leachate being released onto the westerly edge of the pile indicated the pile had been sitting in the same location in excess of 24 hours. Due to the size of the pile, lack of aeration due to the absence of bulking material, and the excessive moisture present, the compost mixtures went anaerobic and caused an unfavorable odor. Mr. Levetzow and Mr. Pickens also observed standing water (ponding) on the northeast corner of the compost pad. Mr. Levetzow and Mr. Pickens did not observe evidence of scattered soybeans and could not verify the selling of uncured compost. On July 21, 2008, DNR Field Office 6 issued a Notice of Violation letter to Chamness for violations of the facility's composting permit.

12. On July 22, 2008, Brent Earley, DNR Field Office 6 environmental specialist, visited the Chamness facility to investigate an issue with regard to odor from compost that was delivered to the Ottumwa Landfill. During the inspection, Mr. Earley noted a large volume of water retained at the east end of the pad and as a result of the ponding the leachate was running off the pad to the east into the unlined soil. Mr. Earley also noted that the facility may be receiving more feedstock than it can adequately process. Mr. Earley found indications that Chamness was accepting starch from Cargill, Cedar Rapids. Cargill, Cedar Rapids and starch were not on the Approved Solid Waste Feedstock list as stated in Table 1 of its composting permit. Mr. Earley found evidence that Chamness was not following best management practices in terms of the maintenance of the ponds. On July 24, 2008, DNR Field Office 6 issued a Notice of Violation letter to Chamness for violations of its operating permit and its composting permit. The letter required Chamness to submit a Plan of Action to address the violations by August 8, 2008. On August 4, 2008, Chamness submitted a Plan

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of Action and met with DNR personnel to discuss the plan. Chamness indicated the facility planned to construct a third storage pond. Chamness also stated that a more detailed letter regarding the Notice of Violation letters would be submitted to the DNR within the next week.

**IV. CONCLUSIONS OF LAW**

Chamness neither admits nor denies the Conclusions of Law and enters into this administrative consent order for settlement purposes only.

1. Iowa Code section 455B.186 states that a pollutant shall not be disposed of by dumping, depositing, or discharging such pollutant into any water of the state, except for adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the Director. On April 22, 2008, Mr. Brandt observed that the west pond was full and overflowing and the east pond was leaking through the berm. The discharge was reaching Palestine Creek. The above facts indicate a violation of this provision.

2. 567 IAC 64.3(1) states that no person shall operate any wastewater disposal system or party thereof, without, or contrary to any condition of an operation permit issued by the Director. Operating Permit #09-001-1-05 allows for the land application of wastewater. However, the permit prohibits waste discharge into a water of the State caused, allowed or permitted from waste storage facilities or from the land application system. During Mr. Brandt's inspection in April 2008, he observed and confirmed that discharge from the Chamness facility was reaching a water of the State. The above facts indicate a violation of this provision.

3. Pursuant to 567 IAC 105.3(4), Provision #10 in Composting Permit #90-SDP-10-97P-COM states that the compost facility must be managed so as to minimize ponding of water or liquids and to provide adequate drainage of storm water offsite to the detention ponds. Any ponding that does occur shall be corrected through routine facility maintenance and/or operation within 24 hours after the termination of the event causing ponding. On July 15, 2008, Mr. Levetzow and Mr. Pickens observed a large volume of water retained at the east end of the pad, both on the north and south side most likely caused by drainage lines being plugged to the stormwater/leachate pond. On July 22, 2008, Mr. Earley observed ponding at the facility as well. The above-mentioned facts indicate violations of this provision.

4. Provision #6 in Composting Permit #90-SDP-10-97P-COM states that the permit holder shall operate the facility in accordance with 567 IAC 105.3. 567 IAC 105.3 requires that measures shall be taken to...and to prevent compost leachate and runoff from leaving the composting facility. On July 22, 2008, Mr. Earley observed leachate was running off the pad to the east into the unlined soil. The above-mentioned facts indicate a violation of this provision.

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5. The Storm Water Pollution Prevention Plan of Composting Permit #90-SDP-10-97P-COM, specifically provisions 6 – 8 states the requirements for when the water reaches or exceeds the freeboard levels. During DNR Field Office 6's March 4, 2008 inspection, it was discovered Chamness was not complying with provisions 6-8 as both ponds were within inches of overflowing the earthen berms. The above-mentioned facts indicate a violation of this provision.

6. Provision #1 in Composting Permit #90-SDP-10-97P-COM requires that Chamness only accept solid waste from facilities listed in Table 1 of the permit and only products listed in Table 1 of the permit. On July 22, 2008, Mr. Earley discovered that Chamness was accepting starch from Cargill, Cedar Rapids. Cargill, Cedar Rapids was not listed in Table 1 of the permit, nor was the starch product. The above-mentioned facts indicate a violation of this provision.

7. 567 IAC 105.9(3) states that all materials received must be incorporated into the composting process within 24 hours of receipt unless storage of these materials is specified in the plan and approved by the DNR. During the field office's visit on July 15, 2008, the field staff observed that the mixing area compost pile was extremely large. Since the compost pad containing the compost material was at its maximum holding capacity, there was not enough room to start new rows of compost with the mixed material. The leachate being released onto the westerly edge of the pile indicated the pile had been sitting in the same location in excess of 24 hours. The above-mentioned facts indicate a violation of this provision.

8. 567 IAC 64.7(5) requires that the permittee must maintain the facility in good working order and operate as efficiently as possible any facilities or systems of control to achieve compliance with the terms and conditions of the permit. The inspections conducted by DNR Field Office 6 between March 2007 and July 2008 indicate that Chamness has failed to properly maintain the facility on several occasions. The above-mentioned facts indicate violations of this provision.

9. 567 IAC 105.3(7) states that solid waste materials shall be managed through the entire process in accordance with best management practices to minimize conditions such as odor, dust, noise, litter and vectors which may create nuisance conditions or a public health hazard. Chamness has had four odor complaints thus far in 2008. Due to the size of the compost pile, lack of aeration due to not containing bulking material, and the excessive moisture present, the compost mixtures went anaerobic and caused an unfavorable odor. The above-mentioned facts indicate violations of this provision.

**V. ORDER**

THEREFORE, the DNR orders and Chamness agrees to do the following:

1. Chamness shall comply with the attached Plan of Action and all other provisions of 567 IAC 105, Permit #90-00-1-05, and Permit #90-SDP-10-97P-COM and

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2. Chamness shall pay a penalty of \$10,000.00. \$2,000.00 of the penalty shall be paid to the DNR within 30 days of the date the Director signs this administrative consent order. In lieu of payment of the remaining \$8,000.00, Chamness shall:

Conduct a Supplemental Environmental Project (SEP). The SEP shall consist of a payment to the Iowa Natural Heritage Foundation.  
Chamness shall make a payment of \$8,000.00 to the Iowa Natural Heritage Foundation within 30 days of the date the Director signs this administrative consent order. Once the payment is made, Chamness shall submit a receipt of payment to Kelli Book, attorney for the DNR.

**VI. PENALTY**

1. Iowa Code sections 455B.191 and 455B.307 authorize the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of 10,000.00. The administrative penalty is determined as follows:

Economic Benefit – Land application of wastewater is labor intensive, time consuming, and costs money. Hauling it to a treatment plant is even more expensive. Chamness saved considerable money by not maintaining adequate freeboard in its lagoons and not properly managing its waste water. Based on the above considerations, \$3,000.00 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The water that reached Palestine Creek had significantly high BOD and ammonia nitrogen levels. Moreover, failure to properly maintain and manage waste water threatens the integrity of the regulatory program. Based on the above considerations, \$2,000.00 is assessed for the discharge to Palestine Creek and \$2,500.00 is assessed for the operating and composting permit violations, for a total of \$4,500.00 being assessed for this factor.

Culpability – Chamness has a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Chamness was well aware of its waste water situation. DNR Field Office 6 had visited the

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facility on March 3, 2008 and sent a letter on March 10, 2008 advising the facility that the ponds were within inches of overflowing and action was needed. Based on the above considerations, \$2,500.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of Chamness. For that reason Chamness waives its rights to appeal this administrative consent order or any part thereof.

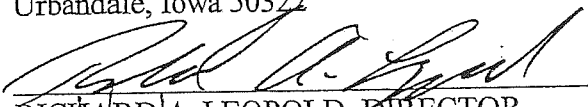
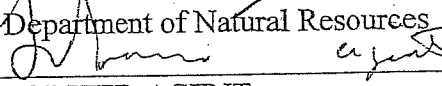
**VIII. NONCOMPLIANCE**

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.191 and 455B.307.

Payment of Penalty shall be submitted to:  
Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

Payment to the Iowa Natural Heritage Foundation shall be submitted to:  
Stacy Nelson, Membership Coordinator  
Iowa Natural Heritage Foundation  
505 5<sup>th</sup> Avenue, Suite 444  
Des Moines, Iowa 50309

Receipt of Iowa Natural Heritage Foundation payment shall be submitted to:  
Kelli Book, Attorney  
DNR  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322

  
RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources  
  
AUTHORIZED AGENT  
Chamness Technology, Inc.

Dated this 19 day of  
Nov., 2008.

Dated this 20 day of  
Nov., 2008.

Kelli Book; Paul Brandt-FO6; Matt McDonald; EPA; VIII.D.1.b



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PLAN OF ACTION  
CHAMNESS TECHNOLOGY, INC.  
EDDYVILLE, IOWA COMPOST FACILITY

A copy of the revised Operation Plan shall be submitted to the DNR by December 31, 2008.

- 1: **Prevention of Storm Water Ponding**
  - Properly maintain the drain line on the east end of the pad;
  - Revise the Operation Plan by December 15, 2008 to include monthly drain line inspection and cleaning within five days after the inspection, if necessary; and
  - Revise the Operation Plan by December 15, 2008 to require the placement of compost windrows in a manner that does not impede storm water drainage from the feedstock mixing area.
- 2: **Storm Water Pollution Prevention Plan Amendment**
  - The May 2007 Storm Water Pollution Plan will be revised by December 15, 2008 to include the following:
    - Revise the description of storm water storage ponds to include the proposed temporary storm water storage pond;
    - Add a provision for the annual inspection of the temporary storm water storage ponds for solid accumulation and pond cleaning, if necessary; and
    - Add a provision for quarterly inspections of the site during a significant precipitation event to ensure all storm drainage from the composting pad is being collected and diverted to the temporary storm water storage ponds.
  - Submit a copy of the revised plan to the Department by December 31, 2008.
- 3: **Storm Water Pond Sludge Management**
  - The quantity of sludge in each of the two temporary storm water storage ponds will be determined by December 15, 2008; and
  - If the estimated quantity of sludge in either of the temporary storm water storage ponds exceeds 25% of the total pond storage capacity, the sludge will be removed and wither utilized in the composting process or applied to permitted land application sites within 60 days of completion of the third storage pond.
- 4: **Feedstock Processing Management**
  - The Operating Plan will be revised by December 15, 2008 to include the following:
    - Modify the description of the mixing and blending operation to ensure the material flows through the process in a plug flow pattern (i.e. oldest mixed material is removed from mixing and blending area first and moved to the composting pad);
    - New materials in the moving stacks will be put down at the lowest elevation level of each specific moving stack formation and the materials in each formation will be moved upgradient toward the pad center as material is turned so the more finished the material in each stack formation, the higher the elevation of that material in the formation; and

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-Modify the description of frequency of stack turning from at least once per week to at least twice per week.

5. **Housekeeping**

- The Operating Plan will be revised by December 15, 2008 to include significant, generally accepted best management (housekeeping) practices; and
- Plant a row of trees to provide adequate coverage on the north berm of the compost site by June 1, 2009.

6. **Storm Water Storage and Management**

- An additional pump has been purchased for loading storage pond water onto high capacity tankers and field application equipment;
- A four-wheel drive tractor has been allocated to the facility for using 6,000 gallon field injection equipment in addition to the existing 2,250 gallon application equipment and direct injection system;
- A truck tractor power unit has been allocated to this facility for hauling storm water offsite, if necessary;
- An additional employee has been added to the staff for storm water management;
- A construction permit application for an additional temporary storm water storage pond has been submitted to DNR and will be constructed within one year after the DNR issues the construction permit;
- If not already completed, the Operation Plan and Storm Water Pollution Prevention Plan will be revised by December 15, 2008 to include the following:
  - Add a provision for weekly monitoring and recording of temporary storm water storage pond levels. This includes the installation of a marker or gauge to provide a tool for the monitoring and recording; and
  - Expand the recommended actions for addressing high storage pond water levels including transferring water to the proposed temporary storm water storage ponds and a treatment agreement with a Waste Water Treatment Plant.

2/ 11/10/08

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**CHAMNESS TECHNOLOGY, INC.**

Wapello County, Iowa

ADMINISTRATIVE CONSENT ORDER

No. 2010-WW - **10**

No. 2010-SW- **27**

TO: Chamness Technology, Inc.  
Rebecca Nott  
Environmental Compliance Manager  
24820 160<sup>th</sup> Street  
Eddyville, Iowa 52553

Chamness Technology, Inc.  
Gary Chamness, Registered Agent  
2255 Little Wall Lake Road  
Blairsburg, Iowa 50034

**I. SUMMARY**

This administrative consent order (order) is entered into between the Iowa Department of Natural Resources (DNR) and Chamness Technology, Inc. (Chamness) for the purpose of resolving alleged wastewater violations at the Chamness facility located south of Eddyville, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this order should be directed to:

**Relating to technical requirements:** **Relating to legal requirements:**

Paul Brandt, Field Office 6  
Iowa Department of Natural Resources  
1023 W. Madison  
Washington, Iowa 52353  
Phone: 319/653-2135

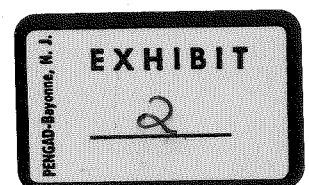
Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/281-8563

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This order is issued pursuant to the provisions of Iowa Code sections 455B.175(1) and 455B.307(2), which authorize the Director to issue any order



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ISSUED TO: CHAMNESS TECHNOLOGY, INC.

necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 or Iowa Code chapter 455B, Division IV, Part 1 and the rules adopted or permits issued pursuant thereto and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

Chamness neither admits nor denies the Statement of Facts and enters into this administrative consent order for settlement purposes only.

1. Chamness is an active, permitted, composting facility located several miles south of Eddyville (N 1/2, NW 1/4, Section 19, T73N, R15W, Wapello County). In addition to wood waste and yard waste, Chamness uses numerous industrial waste streams in its composting process. The facility has two retention basins (east and west ponds) to collect and contain all runoff from the 16 acre, asphalt paved composting pad. In November 2009, a third retention basin was added to the facility.

2. On October 16, 2006, Chamness was issued an NPDES Operation Permit for a Land Application System (Permit #90-00-1-05). The operation permit provided provisions for the land application of storm water runoff from the Chamness facility. The operating permit specifically stated that any discharge of wastewater to surface waters was not permitted and no sanitary waste could be discharged to the runoff storage ponds. On December 6, 2007, Chamness was issued a Solid Waste Composting Permit (Permit #90-SDP-10-97P-COM). The composting permit included the provisions on the operation and maintenance of the facility, an operating plan, and a list of approved facilities and products to be accepted at the facility. The composting permit has been amended on several occasions since the original issuance.

3. On November 19, 2008, the DNR entered into an Administrative Consent Order with Chamness to address alleged solid waste and wastewater violations at the Chamness facility (Administrative Consent Order No. 2008-WW-31/2008-SW-40). A plan of action was attached to address the storm water management issues. These actions were required to be incorporated into a revised operating plan submitted to the DNR by December 15, 2008, and then carried out at the specified frequencies. On December 15, 2008, Chamness submitted the required revised operating plan. The operating plan for the compost permit was approved of by the DNR Solid Waste section on April 8, 2009.

4. On January 9, 2009, Brent Earley, DNR Field Office 6 environmental specialist, conducted a facility inspection at the Chamness facility. Chamness had taken a majority of the actions as required by the Administrative Consent Order's operating plan and was intending on beginning the construction of a new storm water and leachate lagoon in the spring.

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5. On February 6, 2009, DNR Field Office 6 received a complaint alleging odor from the Chamness facility for two days. On February 25, 2009, Paul Brandt, DNR Field Office 6 environmental specialist senior, investigated the complaint. He noted that the two storm water ponds had freeboard greater than two feet, and he did not observe any odor.

6. On March 24, 2009, DNR Field Office 6 received a complaint alleging that Chamness was stock piling material from Cargill to the east of the site. The complainant stated that the pile was not on the permitted property and was covered by compost. On March 25, 2009, Kurt Levetzow, DNR Field Office 6 environmental specialist senior, investigated the complaint. Mr. Levetzow observed a white pile of material stockpiled on barren soil next to a pile of compost. Mr. Levetzow met with company officials. The Chamness employees stated that the material was a mix of 80% mycelium and 20% compost. The facility personnel referred to the mixture as Soil Microbial Stimulant (SMS). The facility personnel stated that Cargill was backed up, but offered no explanation as to why the material was not placed on the composting pad. Mr. Levetzow asked if the facility was permitted to accept the mycelium. The facility's permit did not authorize the accepting, mixing, storing, or composting of mycelium. On April 9, 2009, DNR Field Office 6 sent Chamness a letter regarding Mr. Levetzow's visit. A follow-up visit was conducted by Bert Noll, DNR Field Office 6 environmental specialist, Mr. Levetzow, and Mr. Brandt. The field office 6 personnel met with Chamness personnel to discuss Mr. Levetzow's complaint investigation. The facility personnel indicated that stockpiling in a nearby pile rather than on the composting pad was an error and would not happen again. The facility personnel indicated that all compost/feedstock would be stored and mixed on the weather pad in the future. During the visit, the field office 6 personnel noted the stock pile and composting areas appeared to be working as indicated in the facility's operating plan. On May 19, 2009, DNR Field Office 6 sent Chamness a letter summarizing the visit. The letter requested that Chamness submit further information regarding the use of mycelium. Chamness removed the mycelium from the facility.

7. On May 11, 2009, DNR Field Office 6 received a complaint alleging odor from the facility. On June 10, 2009, Mr. Levetzow investigated the complaint. A south wind enabled Mr. Levetzow to smell the facility from a gravel road on the north side of the facility. He was able to detect a composting odor from the road, however after the site visit he determined the facility was operating under normal operations.

8. On May 26, 2009, DNR Field Office 6 received a call at 4:59 PM from Chamness personnel stating that due to recent precipitation the east pond was starting to overflow. On May 27, 2009, the facility personnel called back to the field office. The facility personnel informed Mr. Brandt that the fields were too wet for land application and that the facility would try pumping from the east pond to the west pond. The west pond was full too. Mr. Brandt suggested pumping to the tank

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trucks to give the facility usable capacity. The facility personnel stated the truck capacity would be about 18,000 gallons and the facility would try that approach. On June 18, 2009, DNR Field Office 6 received a call from Chamness personnel stating that because of recent precipitation the lagoons were full and could not contain any more liquids. The facility planned to start hauling later in the week if the weather allowed. On June 24, 2009, DNR Field Office 6 received a call from Chamness personnel indicating that the east pond was overflowing due to the precipitation over night. The overflow ended mid-morning on June 25, 2009. In an email dated June 26, 2009 from Chamness personnel, the facility intended to start hauling immediately and the soil borings had taken place for the new lagoon.

9. On July 8, 2009, DNR Field Office 6 received an email from Chamness personnel stating that the west lagoon at the facility had starting to overflow on July 7, 2009 due to precipitation. The west lagoon overflowed until the morning of July 8, 2009. The email stated as soon as the ground dried up, water would be hauled from the lagoon. On July 10, 2009, DNR Field Office 6 received an email from Chamness personnel stating that the west lagoon had overflowed for a seven hour period during the morning because of precipitation. The email stated some water had been hauled out and more would be as weather permitted.

10. On July 15, 2009, DNR Field Office 6 received a message from Chamness personnel stating that the west lagoon at the facility had overflowed from approximately 11:30 the night before until 7:00 on the morning of July 15. On July 15, 2009, DNR Field Office 6 also received a complaint alleging odor from the Chamness facility. On August 19, 2009, Mr. Levetzow investigated the complaint. Mr. Levetzow met with facility personnel and noted that the windrows were small and had recently been turned. There was no unordinary ponding on the pad and the lagoons were not overflowing. Mr. Levetzow did not note an abnormal odor at the facility; however the odor from the facility was a little greater on the gravel road on the north side of the property. On September 15, 2009, DNR Field Office 6 sent a letter to the facility regarding Mr. Levetzow's inspection. The facility was informed that DNR Field Office 6 would be making periodic visits to the facility.

11. On August 27, 2009, DNR Field Office 6 received an email from Chamness personnel stating that both the east and west lagoons were overflowing because of precipitation. On September 2, 2009, Mr. Brandt conducted an inspection at the facility. Mr. Brandt noted that the east pond had about six inches of freeboard and the west pond had about 12 inches of freeboard. Mr. Brandt noted that soil had been added to the berm near the northeast corner of the west pond to raise a low area. On the day of the inspection, the wind was from the southeast and as Mr. Brandt approached the facility from the gravel road he detected a strong, unpleasant odor. He noted the strongest odor during the facility inspection was observed while standing down-wind of a windrow turner. Mr. Brandt reviewed the facility storm water land application records. The facility personnel stated that a crew would be on site the following week to draw the two ponds down and land apply the contents. In reviewing the facility's Monthly Operation Reports (MOR) for the

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previous two years, Mr. Brandt compared them to the facility's operating plan. The operating plan stated that based on average rainfall, approximately 6.8 Million Gallons (MG) of storm water must be land applied annually. The MORs showed that 2.62 MG was applied in 2008. Since there had been higher than average rainfall in 2008, Mr. Brandt determined there was about 4 MG of storm water unaccounted for. Through July 2009, 2.2 MG had been land applied. A review of the laboratory data indicated that in 2008, the east pond Biological Oxygen Demand (BOD) ranged from 8,000 to 15,000 mg/L and the ammonia-nitrogen ranged from 170 to 950 mg/L. The west pond BOD ranged from 1,300 to 3,300 mg/L and the ammonia-nitrogen ranged from 160 to 400 mg/L. During the inspection, Mr. Brandt observed that there was long grass growing on the tops of the pond berms. The facility's operating permit required that all facilities and control systems be maintained in good working order. Mr. Brandt also reviewed compliance with the administrative consent order issued in November 2008. The facility had complied with all of the terms of the Administrative Consent Order's operating plan except for three areas of concern. First, Mr. Brandt noted that construction on the third storm water pond had not started. The construction permit for the third pond had been issued on November 14, 2008. The Administrative Consent Order required that construction of the third pond be completed within one year of the issuance of the permit. Facility personnel stated the facility was working with the constructor on the construction of the third pond. Second, the plan required the facility to install a marker or gauge to provide a tool for monitoring and recording pond levels, this had not been completed. And, third the plan required the facility to procure a treatment agreement with a wastewater treatment plant for emergency hauling of wastewater. The facility did have an agreement with the Ottumwa wastewater treatment plant, but the Ottumwa plant was only willing to accept a small amount of wastewater due to the high BOD concentration. An additional requirement in the Administrative Consent Order's operating plan stated the facility would turn the windrows at least twice a week. A review of the quarterly reports indicated that the twice weekly turning had not been attained in the first half of the year.

12. On October 9, 2009, DNR Field Office 6 issued a Notice of Violation letter to Chamness for several violations including: violations of conditions of the Administrative Consent Order; pond freeboard exceedances; and reporting of discharges. The Notice of Violation letter noted that facility personnel had reported seven pond overflow events between May and August 2009. All of the events were caused by precipitation. The ponds at the facility were designed to contain a 25 year/24 hour rainfall event. The data indicates that the 25 year/24 hour rainfall event for the Ottumwa area is approximately 5.5". Records indicate that the greatest amount of rain received during the seven discharges at the facility was 3.7". The facility's Operation Plan of the Composting Permit states that the water level in the basins should never get within two feet of the top of the basin wall. In regards to the reporting requirements, the facility's NPDES permit requires that discharges are to be reported to the DNR within six hours. (The permit has since been amended to allow for a 24 hour reporting time.) The reporting times by Chamness personnel on the seven discharges ranged from immediately to 18 hours. The Notice of Violation

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letter required Chamness to develop a reporting protocol. The Notice of Violation letter required the following: 1) finish the third storm water pond by November 14, 2009; 2) assure that all storm water controls are in place before starting land disturbing activities; 3) install pond depth markers or gauges on the ponds; 4) negotiate a treatment agreement with a wastewater treatment plant for emergency hauling of larger quantities of wastewater; 5) assure all windrows are turned at least twice weekly; 6) keep all pond berms mowed; 7) manage storm water to prevent pond overflows; 8) manage the facility with best management practices to minimize conditions such as odors which may create nuisance condition or a public health hazard; 9) develop a standard plan for reporting overflows and other types of spills; and 10) provide an accounting for the missing four MG of storm runoff in 2008.

13. On November 3, 2009 and November 12, 2009, DNR Field Office 6 received complaints regarding the odor at the Chamness facility.

14. On November 27, 2009, Chamness completed construction on the third pond at the facility.

#### IV. CONCLUSIONS OF LAW

Chamness neither admits nor denies the Conclusions of Law and enters into this administrative consent order for settlement purposes only.

1. The Storm Water Pollution Prevention Plan of Composting Permit #90-SDP-10-97P-COM, specifically Special Provision 6, Section L of the Operation Plan states that the water level in the basins should never get within two feet of the top of the basin wall. Between the months of May and August 2009, there were at least seven overflow events at the facility indicating that the facility was not in compliance with the composting permit. Additionally, during Mr. Brandt's inspection in September 2009, both basins had less than two feet of freeboard. The above-mentioned facts indicate violations of this provision.

2. 567 IAC 64.3(1) states that no person shall operate any wastewater disposal system contrary to any condition of an operation permit issued by the Director. Standard Condition 14 of Operating Permit #90-00-1-05 (permit in place at the time of the violations) required that all discharges were to be reported within six hours. The reporting of the seven overflows by Chamness personnel to DNR Field Office 6 ranged from immediately to 18 hours. The reports made after the six hour requirement were violations of the operating permit. The above-mentioned facts indicate violations of this provision.

3. 567 IAC 105.3(7) states that solid waste materials shall be managed through the entire process in accordance with best management practices to minimize conditions such as odor, dust, noise, litter and vectors which may create nuisance conditions or a public health hazard. DNR Field Office 6 received at least



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five odor complaints between February 2009 and November 2009. The above-mentioned facts indicate violations of this provision may have occurred.

4. The plan of action included with Administrative Consent Order No. 2008-WW-31/2008-SW-40 required that Chamness install pond water level markers by December 15, 2008. During Mr. Brandt's September 2009 investigation, he noted that the water level markers had not been installed. The above-mentioned facts indicate a violation of the Administrative Consent Order.

5. The plan of action included with Administrative Consent Order No. 2008-WW-31/2008-SW-40 required that Chamness procure a treatment agreement with a wastewater treatment plant for emergency hauling of wastewater. Chamness has an agreement with the Ottumwa wastewater treatment plant, but that plant is only willing to accept a small amount of wastewater because of the high BOD concentration. This is not a viable option in a high water emergency. The facility had at least seven overflow events in a three month period of 2009 but did not haul any of the water to a wastewater treatment plant. The above-mentioned facts indicate a violation of the Administrative Consent Order.

6. The plan of action included with Administrative Consent Order No. 2008-WW-31/2008-SW-40 required that the windrow turning frequency would be at least twice per week. The review of the records for the first half of 2009 indicated that the twice per week frequency had not been achieved. The above-mentioned facts indicate a violation of the Administrative Consent Order.

**V. ORDER**

THEREFORE, the DNR orders and Chamness agrees to do the following:

1. Chamness shall comply with all provisions of 567 IAC 105, NPDES Permit #90-00-1-05, and Permit #90-SDP-10-97P-COM, and the Plan of Action included in Administrative Consent Order No. 2008-WW-31/2008-SW-40;
2. Chamness shall maintain at least two feet of freeboard at all times in all three of the storm water ponds at the facility;
3. Chamness shall ensure that there are no overflows from any of the three storm water ponds at the facility;
4. Chamness shall employ best management practices to minimize odor;
5. Within 30 days from the date the Director signs this order, Chamness shall develop a contingency plan and treatment agreement with a wastewater treatment facility that can accept large volumes of wastewater in the event the ponds are nearing full capacity and land application is not possible;

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6. Chamness shall turn the compost windrows at least twice a week;
7. Within 30 days from the date the Director signs this order, Chamness shall install pond level indicators in all three ponds;
8. Within 30 days from the date the Director signs this order, Chamness shall submit a written plan to DNR Field Office 6 detailing the facility's plan for reporting overflows and other reportable spills; and
9. Chamness shall pay a penalty of \$10,000.00. \$2,000.00 of the penalty shall be paid to the DNR within 30 days of the date the Director signs this order. In lieu of payment of the remaining \$8,000.00, Chamness shall:

Conduct a Supplemental Environmental Project (SEP). The SEP shall consist of research project between Chamness, Drake University, and the Wapello County Conservation Board investigating the effects of compost on prairie seed production. The study shall be conducted on a variety of native prairie species planted Wapello County Conservation Board's production plots. Drake University will be responsible for the set up and study of the project. The study is scheduled to begin in late spring 2010 and conclude at the end of the summer 2011. The study results will be provided to the Wapello County Conservation Board. A copy of the study results shall also be provided to the DNR at the conclusion of the study.

**VI. PENALTY**

1. Iowa Code sections 455B.191 and 455B.307 authorize the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of 10,000.00. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the DNR shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made

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where clear data are not available." Land application of wastewater is labor intensive, time consuming, and costs money. Hauling it to a treatment plant is even more expensive. Chamness saved considerable money by not maintaining adequate freeboard in its lagoons, allowing the lagoons to overflow, and not properly managing its wastewater. It is estimated that the Ottumwa wastewater treatment plant would charge \$0.10 per gallon for the wastewater from the Chamness facility. Based on the size of the ponds at the Chamness facility at the time of the discharges, it is estimated that Chamness would have had to haul approximately 100,000 gallons each time to prevent a discharge. If the Ottumwa facility had been willing to accept the wastewater, it would have cost Chamness approximately \$10,000.00 for each discharge event. In looking at other wastewater treatment facilities in the area, it is estimated that if the wastewater had been taken to the Iowa City wastewater treatment plant that the costs, including trucking costs, would have been approximately \$5,000.00 for each discharge event. It is estimated that Chamness was able to save between \$35,000.00 and \$70,000.00 by allowing the ponds to overflow rather than hauling the wastewater off site. Based on the above considerations, \$8,000.00 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The wastewater in the ponds contains high concentrations of BOD and ammonia-nitrogen and poses a threat of reaching a water of the state. Moreover, failure to properly maintain and manage wastewater threatens the integrity of the regulatory program. Additionally, Chamness violated provisions of the previous Administrative Consent Order. Based on the above considerations, \$1,500.00 is assessed for this factor.

Culpability – Chamness has a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Chamness was well aware of its wastewater situation. Chamness has had ongoing issues with the ponds as well as odor complaints. Based on the above considerations, \$500.00 is assessed for this factor.

## VII. WAIVER OF APPEAL RIGHTS


This order is entered into knowingly and with the consent of Chamness. For that reason Chamness waives its rights to appeal this order or any part thereof.

## VIII. NONCOMPLIANCE

Compliance with Section V of this order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this order may result in the imposition of

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administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.191 and 455B. 307.

  
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RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 23 day of  
June, 2010.

  
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CHAMNESS TECHNOLOGY, INC.

Dated this 8 day of  
June, 2010.

Kelli Book; Paul Brandt-FO6; Matt McDonald; EPA; VIII.D.1.b